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Peter Achterstraat AM
NSW Productivity Commissioner
Via e-mail ICReview@productivity.nsw.gov.au

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Dear Sir,

RE: INFRASTRUCTURE CONTRIBUTIONS REVIEW – ISSUES PAPER

Council would like to thank the NSW Productivity Commissioner for the opportunity to provide comment on the Infrastructure Contributions Review Issues Paper. While this submission is not exhaustive, it supports Council's endorsed position on the matter of infrastructure contributions.

In principle, Council recognises the need to review the current contributions system and supports reforms that will streamline the process and bring it up to date with current market and contemporary practices. Council has made a number of suggestions in response to some of the discussion questions outlined in the Issues Paper and these are raised below.

Discussion Questions

Issue 3.1: Principles for planning agreements are non-binding
Issue 3.2: Transparency and accountability for planning agreements are low
Issue 3.3: Planning agreements are resource intensive

The demand for certain types of infrastructure is subject to the timing of development projects and community need and as such can be subject to change resulting from external factors. This makes it difficult to forecast all scenarios and subsequently it is beneficial for there to remain some level of flexibility in what works may be funded by infrastructure contributions such that Council can best provide for current demand.

Voluntary Planning Agreements (VPAs) provide an agile mechanism for Council's to deliver appropriate infrastructure in suitable locations. Additionally, they provide Council's with the means to capture increases to land value such that it is commensurate with the value uplift resulting from a proposal. This is no different, in principle, to issue 4.1 outlined in the Issues Paper. "Socialising" increases in private property values and identifying wider community benefits as a result, is positive and equitable.

In this regard, the retention of VPAs or a similar mechanism is strongly supported in any reformed infrastructure contributions system.

Having regard to the draft Practice Notes exhibited by the Department of Planning. Industry and Environment (DPIE), it is agreed that additional clarity around VPAs would increase developer and community confidence. This may achieve through the public reporting of planning agreements or something similar. It is also supported that the practice notes should provide guidance with regards to when planning agreements are an appropriate mechanism for Council's to capture infrastructure contributions. It is, however, noted that VPAs are already required to undergo a very transparent process of public reporting, exhibition and ongoing availability in a public register.

Issue 3.5: Timing of payment of contributions and delivery of infrastructure does not align

It is recognised that the deferral of contributions may be required for some developments which may otherwise not proceed because of the cost of financing the up-front payment of developer contributions. Notwithstanding, it is considered that the delay of contributions being made to councils will result in a disconnect between the demand for local infrastructure and its delivery through the contribution system, placing unnecessary burden on Council's to provide this infrastructure prior to receiving payment or risk the short-mid term overcrowding of local infrastructure. This is contrary to best practice where infrastructure should be upgraded prior to population growth.

This is especially relevant in light of the COVID19 pandemic and the need to provide additional public spaces to facilitate social distancing, as supported by the measures being implemented by DPIE to increase the amount of public space and bicycle infrastructure within our cities.

With regards to the contribution amounts to be paid, the Issues Paper recognises that over the past 10 years, the cost of delivering local infrastructure has increased at a greater rate than inflation. If the provision of an infrastructure contribution is delayed, assuming no change is made to the current system, the cost of delivering infrastructure outlined in Capital Works Plans will further increase relative to the agreed contribution sum, resulting in increased funding shortfalls for councils. This is likely to significantly impact the ability of a Council's ability to provide for local infrastructure.

The deferral of payments to Council's to deliver essential infrastructure, whilst helping the private sector keeping the economy rolling, will restrict a Council's ability to do the same. A potential interim solution to ensure positive progression for all parties could be that the deferral of payments of infrastructure contributions could be limited to 50% prior to issue of any CC and 50% prior to issue of any OC. This will enable some services and facilities to be delivered earlier to meet the increased demand of generated by new development and assist with the cash flow required to finance infrastructure projects.

Issue 3.6: Infrastructure costs and contributions rates are rising

Current funding mechanisms available to Local Government to fund public infrastructure fall short of meeting the demand resulting from increases to population. This is largely a result of the indexing of the contributions cap threshold to CPI – All Groups Sydney which has historically fallen short of the rate in which capital infrastructure costs have on average increased at a higher rate than CPI.

This has led to delaying the delivery of essential community infrastructure, and placed increased financial burdens on councils to meet those unmet costs through other means (such as general revenue) or resulting in the ongoing deterioration of existing community infrastructure as the population increases.

Whilst it is agreed that it is necessary for the thresholds to be indexed to account for inflation, it is noted that the Road and Bridge Construction Costs Index from the *ABS series 6427.0 - Producer Price Indexes, Australia* has persistently increased faster than inflation. In addition, rate of inflation of land acquisition costs has also far exceeded the CPI – All Groups Sydney rate. As such, it is requested that in the event contributions are to be indexed, that either the Road and Bridge Construction Index (NSW), or a similar index based on capital infrastructure costs be used to index the cap threshold on an ongoing basis rather than CPI.

Issue 3.7: The maximum s7.12 rate is low but balanced with low need for nexus

Section 7.12 local infrastructure levies provide for a flexible contributions mechanism that more closely reflects a type of principles based contribution system. They acknowledge that it is difficult and at times arbitrary to directly link a development with resultant demand for infrastructure, and instead provide a mechanism for which establishing a direct link is not required, albeit with lower rates.

Whilst it is acknowledged that there is a need for some form of nexus to be established with regard to contributions and the infrastructure it funds, it is considered that greater flexibility in identifying this nexus would better suited to the nature of contributions given the demand for infrastructure will vary significantly between locations and proposed growth. As such, it is recommended a set of criteria be established to determine an appropriate contributions rate, with the criteria being based on the need for infrastructure, alignment with local plans and the strength of connection between the development and associated infrastructure.

Issue 3.8: Limited effectiveness of special infrastructure contributions

Special Infrastructure Levies (SICs) significantly weaken Council led community-endorsed placemaking plans for an area by reducing, or potentially eliminating, the ability of Council's to negotiate planning agreements with developers to fund works to meet the demand of the local community. The premise of local infrastructure contributions is to deliver infrastructure in an area of identified need in a timely fashion. Establishing any new mechanism at the state level will result in the compromised delivery of infrastructure that is not necessarily aligned with local needs. As such, Council strongly opposes the retention of a SICs system or any such mechanism that is similar in nature. The imposition of a SIC disregards local government's limited capacity to raise revenue for infrastructure, compared with the State Government's broad capacity to generate income through taxes, charges and other services.

Notwithstanding the above, in the event that SICs or something similar are to remain it would be strongly supported that they be required to align to the relevant District Plan such that a consistent approach to infrastructure provision would be ensured. Also of note, is the blurred responsibilities between the State Government and Council in relation to SICs. Greater clarity is required to clearly determine the responsibility in the operation and administration of SICs in order to ensure accountability is clear

Issue 4.8: Improving transparency and accountability
Issue 4.9: Shortage of expertise and insufficient scale

The proposed increase in transparency and accountability relating to infrastructure contributions and planning agreements is strongly supported as is the streamlining of the plan making process. It is considered that this will provide developers and the community greater confidence in the planning system and will help to alleviate the difficulty Council's face in preparing contributions plans.

It is recommended that these activities be permitted to be incorporated into any new contributions plan as part of the 'administrative costs', such that these costs can be recouped.

Other Factors

The tempering of a Council's ability to deliver essential infrastructure through the contributions system under the EP&A Act, particularly the capping of contribution rates, has required councils to fund the shortfalls not originally anticipated when a relevant contribution plan had been prepared. This has typically resulted in the funding of this infrastructure from general revenue resources.

However, it should be noted that rate capping under the Local Government Act applying since 1977, makes no allowance for Council's to raise general rate revenue to provide new essential/community infrastructure necessary to support population growth. As such, Council would strongly support any changes to the rate peg complementary to any reforms to the infrastructure contributions system.

Conclusion

This submission identifies a range of suggestions and improvements to the infrastructure contributions system. In general, the matters raised in the Issues Paper are supported and will provide greater clarity and accountability to the infrastructure contributions system.

If you have any further queries, please contact [redacted]

Yours sincerely,

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